

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRUCE COLE,

Defendant.

Case No. 3:12-cr-00079-HDM-WGC

ORDER

Defendant Bruce Cole has filed a second motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). (ECF No. 53). The government has opposed (ECF No. 55), and Cole has replied (ECF No. 56).

The court denied Cole's first motion for compassionate release on the grounds that although some of his conditions might place him at greater risk of COVID-19 complications should he contract the virus, extraordinary and compelling reasons did not exist because Cole was not in the highest risk group for COVID-19 complications and the virus did not appear to be spreading rapidly in his institution, FCI Sheridan. The court further concluded that even if extraordinary and compelling reasons did exist, the factors set forth in 18 U.S.C. § 3553(a) did not support the shortening of Cole's sentence. Cole has now filed another motion for

1 compassionate release, arguing that new facts identified compel
2 the court to reweigh the relevant factors and that, after doing
3 so, it should now grant compassionate release.

4 Cole asserts that cases of COVID-19 have increased rapidly in
5 his institution since the court's last order, numbering 24 active
6 cases at the time of filing his motion. He asserts that this,
7 combined with the emergence and spread of more severe variants of
8 the coronavirus, his underlying medical conditions, and the
9 continued failure of BOP to treat his current and newly discovered
10 medical conditions, amount to extraordinary and compelling reasons
11 for his release and justify a conclusion that early release is
12 justified under the § 3553(a) factors.

13 The number of active COVID-19 cases in FCI Sheridan has
14 dropped from 24 at the time of the filing of Cole's motion to 7 as
15 of the date of this order, which does not support a conclusion
16 that the virus is currently spreading rapidly in Cole's
17 institution. See <https://www.bop.gov/coronavirus/> (last visited
18 Feb. 18, 2021). Further, the court agrees with the government that
19 there is a substantial likelihood that Cole, as an inmate
20 incarcerated with the Bureau of Prisons, will receive the COVID-
21 19 vaccine relatively soon -- or at least sooner than if he were
22 released from custody. At a minimum, the vaccine will protect Cole
23 from the most severe outcomes of contracting the virus if not
24 prevent him from contracting it altogether. The new facts
25 identified by Cole thus do not persuade the court that
26 extraordinary and compelling reasons now exist or that the
27 § 3553(a) factors now favor release.

1 In accordance with the foregoing, Cole's second motion for
2 compassionate release (ECF No. 53) is hereby DENIED.

3 IT IS SO ORDERED.

4 DATED: This 18th day of February, 2021.

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7 UNITED STATES DISTRICT JUDGE
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